

# STATE OF INDIANA



INDIANA UTILITY REGULATORY COMMISSION  
302 W. WASHINGTON STREET, SUITE E-306  
INDIANAPOLIS, INDIANA 46204-2764

<http://www.state.in.us/iurc/>  
Office: (317) 232-2701  
Facsimile: (317) 232-6758

**IN THE COMMISSION'S INVESTIGATION OF THE  
RATES AND CHARGES FOR ELECTRIC SERVICE  
PROVIDED BY NORTHERN INDIANA PUBLIC  
SERVICE COMPANY PURSUANT TO INDIANA CODE  
8-1-2-1 ET SEQ. INCLUDING, BUT NOT LIMITED TO,  
I.C. 8-1-2-42.5, 8-1-2-58, 8-1-2-59, 8-1-2-73.  
RESPONDENT: NORTHERN INDIANA PUBLIC  
SERVICE COMPANY, INC.**

**FILED**

**MAR 07 2003**

INDIANA UTILITY  
REGULATORY COMMISSION  
**CAUSE NO. 41746-S1**

You are hereby notified that on this date, the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made:

On March 7, 2003 an attorneys' conference was convened for purposes of the presiding officers hearing a discovery dispute arising from the deposition of Mr. John F. Wickes. The parties agreed to e-mail the presiding judge a copy of the deposition and the questions certified. At the conference, counsel for Citizens Action Coalition submitted a Motion to Compel Discovery and Resume Deposition. The Motion requests the Commission order the Industrial Group to produce copies of settlement documents and communications with other parties (exclusive of communications with clients) including e-mails, notes or minutes, originated in Cause No. 41746 between January 24, 2002 and June 20, 2002 and; order the resumption of Mr. Wickes' deposition for purposes of answering the questions he refused to answer on instruction of counsel and which were certified by the court reporter.

Counsel for CAC stated that the issue over the certified questions is about the scope of discoverable matters. He argued that the settlement negotiations in this Cause were irregular in certain aspects and that even though settlement negotiations are confidential, under certain circumstances there are exceptions. CAC relied on and cited to *General Motors*, 594 F.2d 1106 for its argument.

Counsel for NIPSCO Industrial Group countered CAC's arguments and stated that the matters in dispute are privileged and the subject of confidential settlement negotiations, attorney work product and irrelevant to this Cause. Counsel for the Industrial Group cited *National Engineering*, 676 N.E. 2d 372 (Ind.Ct.App. 1997) for its argument.

The presiding officers, being sufficiently advised in the premises, now find that CAC's Motion should be denied (with one exception) pursuant to Ind. Tr. Rule 26(B)(3) and Ind. R. Evid. 408. Indiana Trial Rule 26(B)(3) states that the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of a party concerning the litigation. The *National Engineering* case states that such material, often called opinion work product, is entitled to absolute protection from discovery. *Id.* at 376. Further,

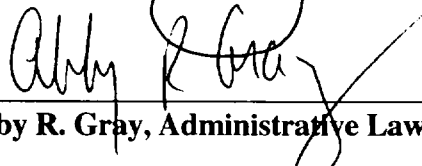
evidence Rule 408 states that evidence of compromise or offers of compromise are not admissible into evidence. We are unconvinced that the GM case relied upon by CAC is applicable to the facts of our instant Cause. Lastly, the settlement negotiations in Cause No. 41746 are not at issue in this attorneys' fees case subdocket.

There is one certified question that does not fall into the categories discussed above. That is question 45/15 which we find should be answered by Mr. Wickes at the hearing on March 10, 2003.

**IT IS SO ORDERED.**



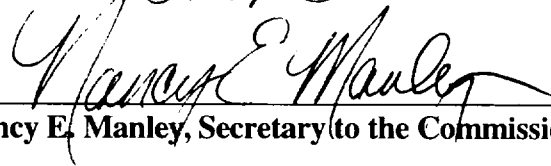
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**David E. Ziegner, Commissioner**



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**Abby R. Gray, Administrative Law Judge**

**Dated:** \_\_\_\_\_

3/7/03



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**Nancy E. Manley, Secretary to the Commission**